

1 James Patrick Shea, Esq.  
2 Nevada Bar No. 405  
3 Bart K. Larsen, Esq.  
4 Nevada Bar No. 8538  
5 Kyle M. Wyant, Esq.  
6 Nevada Bar No. 14652  
7 **SHEA LARSEN**  
8 1731 Village Center Circle, Suite 150  
9 Las Vegas, Nevada 89134  
10 Telephone: (702) 471-7432  
11 Fax: (702) 926-9683  
12 Email: jshea@shea.law  
13 blarsen@shea.law  
14 kwyant@shea.law

15 -and-

16 **MORRISON & FOERSTER LLP**  
17 Gary Lee, Esq. (*Admitted Pro Hac Vice*)  
18 New York Bar No. 2397669  
19 Andrew Kissner, Esq. (*Admitted Pro Hac Vice*)  
20 New York Bar No. 5507652  
21 250 West 55th Street  
22 New York, New York 10019-3601  
23 Telephone: 212.468.8000  
24 Facsimile: 212.468.7900  
25 Email: glee@mofo.com  
akissner@mofo.com

26 *Attorneys for Enigma Securities Limited*

27 **UNITED STATES BANKRUPTCY COURT**

28 **FOR THE DISTRICT OF NEVADA**

29 IN RE:

30 CASH CLOUD INC., dba Coin Cloud

31 Debtor.

32 Case No.: BK-S-23-10423-MKN

33 Chapter 11

34 ECF Nos. 35, 74, 80

35 Hearing Date: February 15, 2023

36 Hearing Time: 10:30 a.m. (PT)

37 **ENIGMA SECURITIES LIMITED'S RESPONSE TO COLE KEPRO**  
38 **INTERNATIONAL, LLC'S OBJECTION TO MOTION TO APPROVE POST-**  
39 **PETITION FINANCING ON AN INTERIM BASIS**

Enigma Securities Limited (“Enigma”), by and through its undersigned counsel, files this response (the “Response”) in opposition to Cole Kepro International, LLC’s (“Cole Kepro”) *Objection to Debtor’s Motion for Interim and Final Orders: (I) Authorizing Debtor to Obtain Post-Petition Senior Secured, Superpriority Financing; (II) Granting Liens and Superpriority Claims; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief* [ECF. No. 80] (the “Objection”).<sup>1</sup> In support of its Response, Enigma respectfully states as follows.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

1. Enigma is an industry leading provider of cryptocurrency trading, liquidity, custody, and lending solutions for institutional and corporate clients. In addition to providing the Debtor with a facility pursuant to which it may trade cryptocurrency (an activity that is vital to the Debtor's business), Enigma also lent the Debtor \$8 million pursuant to a Secured Loan Facility Agreement dated as of April 22, 2022 (the "Enigma Secured Loan"). In order to secure its obligations under the Enigma Secured Loan, the Debtor granted Enigma a first priority lien in certain of its digital currency machines ("DCMs"), as well as the cash proceeds contained therein and generated therefrom (along with the DCMs, the "Enigma Collateral").

2. Pursuant to the Motion, the Debtor seeks the Court’s permission, on an interim and final basis, to enter into a \$5,000,000 senior secured post-petition financing facility (the “DIP Facility”), to be provided by CKDL Credit, LLC (the “DIP Lender”). The Debtor proposes to secure its obligations under the DIP Facility with, among other things, a priming lien on the Enigma Collateral in favor of the DIP Lender that would be senior to the lien securing the Enigma Loan. In exchange for Enigma’s consent to be primed, the Debtor and the DIP Lender have agreed to provide Enigma with adequate protection on the terms described in the Motion.

3. Cole Kepro—a vendor that the Debtor alleges to have delivered thousands of faulty DCMs to the Debtor, and that claims an expansive (albeit disputed) security interest in the Debtor’s

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Objection.

1 property that is subject to a pending adversary proceeding—objects to the Motion, including the  
2 adequate protection provided to Enigma thereunder. In addition to questioning the Debtor’s need  
3 for post-petition financing generally, Cole Kepro objects specifically to the Debtor’s provision of  
4 (a) replacement liens, (b) superpriority administrative expense claims, (c) cash payments, and  
5 (d) stipulations in favor of Enigma (collectively, the “Enigma Adequate Protection”), as well as to  
6 (e) the establishment of a deadline by which a party in interest with requisite standing must initiate  
7 a challenge to the validity, enforceability, or perfection of Enigma’s claims and liens.

8       4.     Enigma takes no position with respect to the Debtor’s need for post-petition financing  
9 or the merits of this particular DIP Facility at this time. However, to the extent the Debtor seeks to  
10 prime Enigma’s interest in the Enigma Collateral, it must obtain Enigma’s consent. Otherwise, it  
11 will be the Debtor’s burden to demonstrate that it has provided Enigma with adequate protection  
12 from any diminution in the value of its liens. 11 U.S.C. §§ 364(d)(1), (2). Such adequate protection  
13 must place Enigma in the same position as “if there had not been post-petition [priming] financing”  
14 in the first place. *In re Hollister*, Case No. 2:18-bk-12429-NB (Bankr. C.D. Cal. Mar. 8, 2021),  
15 [ECF. No. 1382] (alteration in original), *aff’d* 2021 WL 6124757 (9th Cir. Dec. 28, 2021).

16       5.     Contrary to Cole Kepro's assertions, and as discussed in the Motion and the  
17 declarations in support thereof, the Enigma Adequate Protection is fair, reasonable, and necessary  
18 to obtain Enigma's consent to be primed by the DIP Lender. Further, Enigma's consent to be primed  
19 on the terms set forth in the Interim Order avoids the significant time and expense attendant to a  
20 protracted priming fight, which burden would ultimately be borne by the estate. Accordingly, and  
21 for the reasons set forth below, the Objection should be overruled.

22       6. *First*, the Objection proceeds from the faulty premise that a supposedly “sizable  
23 equity cushion” obviates the need to provide Enigma with adequate protection. That could not be  
24 further from the truth. To the contrary, the testimony submitted by the Debtor in support of the  
25 Motion suggests that, upon the Debtor’s entry into the DIP Facility, Enigma may lack any equity  
26 cushion in the Enigma Collateral.

1       7. Specifically, the Huygens Declaration<sup>2</sup> states that the Enigma Collateral is worth  
 2 approximately \$11.3 million, while Enigma's secured claim as of the Petition Date was  
 3 approximately \$7.6 million.<sup>3</sup> Although this implies an excess collateral value of approximately \$3.7  
 4 million, any such "cushion" that may exist will be completely consumed by the \$5 million of senior  
 5 claims securing the DIP Facility. *See, e.g., In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984) (equity  
 6 cushion determined by deducting the value of senior liens); *Nantucket Investors II v. California Fed.*  
 7 *Bank (In re Indian Palms Assocs.)*, 61 F.3d 197, 207 (3d Cir. 1995) (equity cushion determined by  
 8 "the value of the property after deducting . . . all senior claims"); *see also* COLLIER ON BANKR.  
 9 ¶ 361.03[1] (16th ed. 2022) (collecting cases standing for same).

10     8. **Second**, Cole Kepro's assertion that the replacement liens, superpriority  
 11 administrative expense claims, and cash payments provided to Enigma are "unnecessary and  
 12 inappropriate" is devoid of merit.

13     9. The Bankruptcy Code itself recognizes that replacement liens are a standard method  
 14 of providing adequate protection. *See* 11 U.S.C. § 361(2) (a trustee may provide "an additional or  
 15 replacement lien"). Accordingly, courts in this jurisdiction, as well as others, routinely approve of  
 16 orders providing replacement liens where a prepetition secured lender is primed by a post-petition  
 17 financing facility or otherwise consents to the use of its collateral by the debtor. *See, e.g., In re*  
 18 *Musclepharm Corp.*, Case No. 22-14422-NMC (Bankr. D. Nev. Jan. 23, 2023), [ECF. No. 139],  
 19 Exh. 1, at 20 (order approving DIP on interim basis and granting replacement liens to prepetition  
 20 lender); *In re Tru Grit Fitness LLC*, Case No. 22-14320-ABL (Bankr. D. Nev. Dec. 29, 2022), [ECF.  
 21 No. 55], at ¶ 13 (interim order approving use of cash collateral and granting replacement liens to  
 22 prepetition lender); *In re Metal Partners Rebar, LLC*, Case No. BK-20-12878-ABL (Bankr. D. Nev.  
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24     <sup>2</sup> See Declaration of Paul Huygens in Support of Motion for Interim and Final Orders: (I) Authorizing Debtor to  
 25 Obtain Post-Petition Senior Secured, Superpriority Financing; (II) Granting Liens and Superpriority Claims;  
 26 (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief [ECF. No. 37],  
 27 Ex. 1.

28     <sup>3</sup> Enigma reserves all rights with respect to the valuation of the Enigma Collateral and the amount of its claim in this  
 case.

1 Aug. 11, 2020), [ECF No. 315], at ¶ 4(b) (approving DIP facility and granting replacement liens to  
 2 prepetition lender).<sup>4</sup> Importantly, the Debtor is only providing replacement liens to Enigma on the  
 3 Enigma Collateral. *See* Interim DIP Order, at ¶ 10(a). Practically speaking, then, the Interim Order  
 4 only operates to subordinate Enigma's liens on its preexisting collateral base; it does **not** grant  
 5 Enigma a new lien on anything it did not already have.

6       10. The proposed cash payments to Enigma (consisting of professional fees and post-  
 7 petition interest) are a similarly canonical form of adequate protection, and indeed are expressly  
 8 referenced in Bankruptcy Code section 361 as an example thereof. 11 U.S.C. § 361(1) (adequate  
 9 protection may include "periodic cash payments" to a secured lender). Further, to the extent Enigma  
 10 is in fact oversecured, then the Bankruptcy Code separately and independently authorizes Enigma  
 11 to receive the post-petition interest and reimbursement of professional fees to which it is  
 12 contractually entitled. *See* 11 U.S.C. § 506(b).<sup>5</sup>

13       11. And with respect to the superpriority claims in Enigma's favor, while an  
 14 administrative expense claim on its own does not constitute adequate protection of a secured lender,  
 15 *see* 11 U.S.C. § 361(3) (authorizing the court to grant adequate protection "other than . . .  
 16 compensation allowable under section 503(b)(1) of this title as an administrative expense"), courts  
 17 have long recognized that it is appropriately used as a "backstop" to supplement other forms of  
 18 adequate protection. *See* COLLIER ON BANKR. ¶ 361.03[4][a] (16th ed. 2022) (collecting cases).

19       12. **Third**, the stipulations made in favor of Enigma in the Interim Order and the  
 20 establishment of a challenge period are far from "unnecessary" and "improvident," and are rather a  
 21 near-universal feature of DIP and cash collateral orders approved by bankruptcy courts in chapter  
 22 11 cases of this magnitude, both in this jurisdiction and others. *See, e.g., In re Musclepharm Corp.*,

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23       4 *See also In re Nielsen & Bainbridge, LLC*, Case No. 23-90071-DRJ (Bankr. S.D. Tex. Feb. 10, 2023), [ECF. No.  
 24 67], at ¶ 12 (interim DIP order providing replacement liens); *In re FB Debt Financing Guarantor, LLC*, Case No. 23-  
 25 10025-KBO (Bankr. D. Del. Jan. 13, 2023), [ECF No. 100], at ¶ 14 (same); *In re Clovis Oncology, Inc.*, Case No. 22-  
 26 11292-JKS (Bankr. D. Del. Dec. 16, 2022), [ECF No. 113] at ¶ 6(a) (same); *In re Revlon, Inc.*, Case No. 22-10760-  
 DSJ (Bankr. S.D.N.Y. Jun. 17, 2022), [ECF. No. 70], at ¶ 14(a) (same).

27       5 By contrast, if Enigma is instead undersecured, then pursuant to the Interim Order the Debtor has reserved all rights  
 28 and defenses it may have. *See* Interim Order, at ¶ 10(g).

<sup>1</sup> Case No. 22-14422-NMC (Bankr. D. Nev. Jan. 23, 2023), [ECF. No. 139], Ex. 1, at 21 (order  
<sup>2</sup> approving DIP on interim basis, including 60-day committee challenge period); *In re Metal Partners*  
<sup>3</sup> *Rebar, LLC*, Case No. BK-20-12878-ABL (Bankr. D. Nev. Aug. 11, 2020), [ECF No. 315], at ¶¶ D,  
<sup>4</sup> 8 (stipulations in favor of prepetition lender, subject to 75-day challenge period).<sup>6</sup>

13. Finally, the Objection states that it is “unclear if the DIP Lender has any connections  
to the Debtor[’s] . . . existing secured creditors.” Objection, at ¶ 5. To the extent relevant to the  
Court’s consideration of the Motion, Enigma hereby confirms that it is not an affiliate of, and to the  
best of its knowledge has no prior relationship with, the DIP Lender.

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**SHEA LARSEN**  
1731 Village Center Circle, Suite 150  
Las Vegas, Nevada 89134  
(702) 471-7432

<sup>6</sup> See also *In re Nielsen & Bainbridge, LLC*, Case No. 23-90071-DRJ (Bankr. S.D. Tex. Feb. 10, 2023), [ECF No. 67], at ¶¶ G, J, 17 (stipulations subject to challenge period); *In re FB Debt Financing Guarantor, LLC*, Case No. 23-10025-KBO (Bankr. D. Del. Jan. 13, 2023), [ECF No. 100], at ¶¶ F, 44 (same); *In re Clovis Oncology, Inc.*, Case No. 22-11292-JKS (Bankr. D. Del. Dec. 16, 2022), [ECF No. 113], at ¶¶ G, 19 (same); *In re Revlon, Inc.*, Case No. 22-10760-DSJ (Bankr. S.D.N.Y. Jun. 17, 2022), [ECF. No. 70], at ¶¶ G, 29 (same);

1           **WHEREFORE**, Enigma requests that the Court overrule the Objection and grant any  
2 additional relief the Court deems appropriate.

3           Dated this 14th Day of February, 2023.

4           By: /s/ James Patrick Shea, Esq.

5           James Patrick Shea, Esq.

6           Nevada Bar No. 405

7           Bart K. Larsen, Esq.

8           Nevada Bar No. 8538

9           Kyle M. Wyant, Esq.

10          Nevada Bar No. 14652

11          **SHEA LARSEN**

12          1731 Village Center Circle, Suite 150

13          Las Vegas, Nevada 89134

14          Telephone: (702) 471-7432

15          Fax: (702) 926-9683

16          Email: jshea@shea.law

17          blarsen@shea.law

18          kwyant@shea.law

19          -and-

20          Gary Lee, Esq. (*Admitted Pro Hac Vice*)

21          New York Bar No. 2397669

22          Andrew Kissner, Esq. (*Admitted Pro Hac Vice*)

23          New York Bar No. 5507652

24          **MORRISON & FOERSTER LLP**

25          250 West 55th Street

26          New York, New York 10019-3601

27          Telephone: 212.468.8000

28          Facsimile: 212.468.7900

29          Email: glee@mofo.com

30          akissner@mofo.com

31          *Attorneys for Creditor*  
32          *Enigma Securities Limited*

33          **SHEA LARSEN**  
34          1731 Village Center Circle, Suite 150  
35          Las Vegas, Nevada 89134  
36          (702) 471-7432

**CERTIFICATE OF SERVICE**

1        1. On February 14, 2023, I served **ENIGMA SECURITIES LIMITED'S  
RESPONSE TO COLE KEPRO INTERNATIONAL, LLC'S OBJECTION TO  
MOTION TO APPROVE POST-PETITION FINANCING ON AN INTERIM  
BASIS** in the following manner:

2               a. ECF System: Under Administrative Order 02-1 (Rev. 8-31-04) of  
3                          the United States Bankruptcy Court for the District of Nevada, the above-referenced  
4                          document was electronically filed on the date hereof and served through the Notice  
5                          of Electronic Filing automatically generated by the Court's facilities.

6               b. United States mail, postage fully prepaid:

7               c. Personal Service:

8              I personally delivered the document(s) to the persons at these addresses:

9               For a party represented by an attorney, delivery was made by  
10                       handing the document(s) at the attorney's office with a clerk or other person in  
11                       charge, or if no one is in charge by leaving the document(s) in a conspicuous place  
12                       in the office.

13               For a party, delivery was made by handling the document(s)  
14                       to the party or by leaving the document(s) at the person's dwelling house or usual  
15                       place of abode with someone of suitable age and discretion residing there.

16               d. By direct email (as opposed to through the ECF System):  
17                       Based upon the written agreement of the parties to accept service by email or a  
18                       court order, I caused the document(s) to be sent to the persons at the email  
19                       addresses listed below. I did not receive, within a reasonable time after the  
20                       transmission, any electronic message or other indication that the transmission was  
21                       unsuccessful.

22               e. By fax transmission:

23              Based upon the written agreement of the parties to accept service by fax  
24                       transmission or a court order, I faxed the document(s) to the persons at the fax  
25                       numbers listed below. No error was reported by the fax machine that I used. A copy  
26                       of the record of the fax transmission is attached.

27               f. By messenger:

28              I served the document(s) by placing them in an envelope or package addressed to  
29                       the persons at the addresses listed below and providing them to a messenger for  
30                       service.

31              I declare under penalty of perjury that the foregoing is true and correct.

32              Dated: February 14, 2023

33              By: /s/ James Patrick Shea, Esq.